

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

HERV ALEXIS,

Index No.:

Plaintiff,

Date Purchased:

-against-

S U M M O N S

THE CITY OF NEW YORK, POLICE OFFICER JOHN
MAZZELLA, BADGE # 921551 and POLICE OFFICER
CHARLES MARTELLO, BADGE # 903165,

Plaintiff designates Kings County as
the place of trial.

The basis of venue is:
Place of arrest and prosecution

Defendants.

To The Above Named Defendants:

You are Hereby Summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
November 21, 2014

LAW OFFICE OF MARK SCHWARTZ
Attorney for Plaintiff
HERV ALEXIS
225 Broadway, Suite 2510
New York, New York 10007
Tel. 212-619-6275
Our File No. 13-101

TO: THE CITY OF NEW YORK
100 Church Street
New York, New York 10007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

<p>HERV ALEXIS,</p> <p>Plaintiff,</p> <p>-against-</p> <p>THE CITY OF NEW YORK, POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 and POLICE OFFICER CHARLES MARTELLO, BADGE # 903165,</p> <p>Defendants.</p>	<p>VERIFIED COMPLAINT</p> <p>Index No.:</p>
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Plaintiff, by his attorney, **LAW OFFICE OF MARK SCHWARTZ**, complaining of the Defendants, respectfully alleges, upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION
IN FAVOR OF PLAINTIFF HERV ALEXIS

1. That prior hereto on December 5, 2013, and within the time prescribed by law, a sworn Notice of Claim stating, among other things, the time when and place where the injuries and damages were sustained, together with Plaintiff's demands for adjustment thereof was duly served on the claimant's behalf on the Comptroller for the City of New York and that thereafter said Comptroller for the City of New York refused or neglected for more than thirty (30) days, and up to the commencement of this action, to make any adjustment or payment thereof, and that thereafter, and within the time provided by law, this action was commenced.

2. That on February 18, 2014, pursuant to General Municipal Law 50(h), a hearing was held by the THE CITY OF NEW YORK.

3. That this action is being commenced within one year and ninety days after accrual of this cause of action, or within the time allowed by law.

4. At all times relevant and material herein, Plaintiff HERV ALEXIS was, and still is, a resident of Hawley, Pennsylvania.

5. At all times relevant and material herein, Defendant THE CITY OF NEW YORK was, and still is, a municipal corporation.

6. At all times relevant and material herein, the defendant POLICE OFFICER JOHN MAZZELLA, BADGE # 921551, was an employee of the Police Department of the City of New York.

7. At all times relevant and material herein, the defendant POLICE OFFICER CHARLES MARTELLO, BADGE # 903165, was an employee of the Police Department of the City of New York.

8. At all times relevant and material herein, the defendant CITY OF NEW YORK operated a police department as part of and in conjunction with its municipal functions.

9. At all times relevant and material herein, the defendant CITY OF NEW YORK maintained a police department as part of and in conjunction with its municipal functions.

10. At all times relevant and material herein, the defendant CITY OF NEW YORK managed a police department as part of and in conjunction with its municipal functions.

11. At all times relevant and material herein, the defendant CITY OF NEW YORK supervised a police department as part of and in conjunction with its municipal functions.

12. At all times relevant and material herein, the defendant CITY OF NEW YORK controlled a police department as part of and in conjunction with its municipal functions.

13. At all times relevant and material herein, the defendant POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 was a member of personnel of the Police Department of the City of New York.

14. At all times relevant and material herein, the defendant POLICE OFFICER CHARLES MARTELLO, BADGE # 903165 was a member of personnel of the Police Department of the City of New York.

15. That at all times hereinafter mentioned and upon information and belief, the defendant CITY OF NEW YORK, employed and supervised the defendant POLICE OFFICER JOHN MAZZELLA, BADGE # 921551.

16. That at all times hereinafter mentioned and upon information and belief, the defendant CITY OF NEW YORK, employed and supervised the defendant POLICE OFFICER CHARLES MARTELLO, BADGE # 903165.

17. Upon information and belief, the defendant POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 was a graduate of the Police Academy of the City of New York.

18. Upon information and belief, the defendant POLICE OFFICER CHARLES MARTELLO, BADGE # 903165 was a graduate of the Police Academy of the City of New York.

19. At all times relevant hereto, the defendant City of New York had the duty to competently and sufficiently train, within the Police Academy and at the Command, Precinct and Patrol levels, the defendant POLICE OFFICER JOHN MAZZELLA, BADGE # 921551, to conform his conduct to a standard for the protection of individuals, such as Plaintiff, against the unreasonable risk of harm by conducting themselves in such a manner so as not to intentionally, wantonly and/or negligently inflict injuries to citizens such as Plaintiff herein.

20. At all times relevant hereto, the defendant City of New York had the duty to competently and sufficiently train, within the Police Academy and at the Command, Precinct and Patrol levels, the defendant POLICE OFFICER CHARLES MARTELLO, BADGE # 903165, to conform his conduct to a standard for the protection of individuals, such as Plaintiff, against the unreasonable risk of harm by conducting themselves in such a manner so as not to intentionally, wantonly and/or negligently inflict injuries to citizens such as Plaintiff herein.

21. In addition, at all times relevant hereto, the defendant City of New York had the duty to competently and sufficiently train within the Police Academy and at the Command, Precinct and

Patrol levels the defendant officer, POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 in the protections of the rights of Plaintiff under the Constitution and the Bill of Rights.

22. In addition, at all times relevant hereto, the defendant City of New York had the duty to competently and sufficiently train within the Police Academy and at the Command, Precinct and Patrol levels the defendant officer, POLICE OFFICER CHARLES MARTELLO, BADGE # 903165 in the protections of the rights of Plaintiff under the Constitution and the Bill of Rights.

23. At all times hereinafter mentioned, upon information and belief, the defendant POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 was acting in his capacity as an employee, agent or servant of the defendant CITY OF NEW YORK.

24. At all times hereinafter mentioned, upon information and belief, the defendant POLICE OFFICER CHARLES MARTELLO, BADGE # 903165 was acting in his capacity as an employee, agent or servant of the defendant CITY OF NEW YORK.

25. At all times hereinafter mentioned, the defendant POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 was acting under color of law.

26. At all times hereinafter mentioned, the defendant POLICE OFFICER CHARLES MARTELLO, BADGE # 903165 was acting under color of law.

27. At all times hereinafter mentioned, the defendants' acts constituted state action.

28. On or about August 16, 2012, Plaintiff was on Farragut Road, in the City and State of New York, County of Kings.

29. Additionally, on or about August 16, 2012, the defendants POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 and POLICE OFFICER CHARLES MARTELLO, BADGE # 903165 were on duty and/or acting as employees, agents or servants of the defendant CITY OF NEW YORK, and were also present at the same time and in the same place as Plaintiff, as aforesaid.

30. On or about August 16, 2012, the defendants POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 and POLICE OFFICER CHARLES MARTELLO, BADGE # 903165, detained, attacked and beat Plaintiff, and further assaulted Plaintiff.

31. In addition to the defendants' willful and intentional attack upon Plaintiff, the defendants intentionally held and restrained Plaintiff without his consent.

32. Plaintiff was then arrested and/or caused to be arrested and charged with various crimes.

33. The charges were subsequently dismissed or otherwise disposed of.

34. All of the defendants' acts described in the preceding paragraphs were without probable or just cause, grounds or provocation, and were excessive, unreasonable, unnecessary and without any privilege or justification.

35. By reason of the foregoing acts by the defendants, Plaintiff was severely injured and suffered, and upon information and belief, will continue to suffer, continuous pain and anguish.

36. By reason of the foregoing acts by the defendants, Plaintiff was caused severe and intense emotional anguish, distress and embarrassment, and upon information and belief, will continue to suffer same.

37. That all of the causes of action pleaded herein fall within one or more of the exceptions set forth in New York's Civil Practice Law & Rules 1602 with respect to joint and several liability.

38. By reason of the foregoing, Plaintiff was compelled to, and did necessarily, require

medical attention and did necessarily pay and become liable therefore, and upon information and belief, Plaintiff will necessarily incur similar expenses.

39. By reason of the foregoing, Plaintiff was compelled to, and did necessarily, incur legal fees and did necessarily pay and become liable therefore, and upon information and belief, Plaintiff will necessarily incur similar legal fees.

40. That as a result of the foregoing, Plaintiff was damaged in an amount which exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action, together with the interest, costs and disbursements of this action.

AS AND FOR A SECOND CAUSE OF ACTION
IN FAVOR OF PLAINTIFF HERV ALEXIS

41. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

42. The defendants' acts towards Plaintiff as previously set forth herein were without warrant, authority of law, or any reasonable cause or belief that Plaintiff committed any crime.

43. Such acts constituted a deprivation of Plaintiff's Constitutional rights, liberties and freedoms under color of State law, under 42 U.S.C. §1983.

44. Said violation of Plaintiff's Constitutional rights caused him personal injury and damage, both physical and mental; and severe emotional distress and illness.

45. By reason of Defendants' violation of Plaintiff's Constitutional rights Plaintiff was damaged in an amount which exceeds the jurisdictional limitations of all lower courts which would

otherwise have jurisdiction over this action, together with the interest, costs and disbursements of this action.

AS AND FOR A THIRD CAUSE OF ACTION
IN FAVOR OF PLAINTIFF HERV ALEXIS

46. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

47. The defendants' assault and battery of Plaintiff was excessive, unwarranted, unnecessary and violent and violated Plaintiff's rights under the Constitution.

48. The said assault and battery caused Plaintiff personal injury and damage, both physical and mental; and severe emotional distress and illness.

49. By reason of the foregoing Plaintiff was damaged in an amount which exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action, together with the interest, costs and disbursements of this action.

AS AND FOR A FOURTH CAUSE OF ACTION
IN FAVOR OF PLAINTIFF HERV ALEXIS

50. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

51. The defendants arrested, detained and imprisoned Plaintiff, without warrant, even though they knew or should have known that he was wholly innocent of any crime then and there alleged against him, and thus violated Plaintiff's Constitutional rights.

52. The said arrest, detainment and imprisonment caused Plaintiff personal injury and damage, both physical and mental; and severe emotional distress and illness.

53. By reason of the foregoing Plaintiff was damaged in an amount which exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this

action, together with the interest, costs and disbursements of this action.

AS AND FOR A FIFTH CAUSE OF ACTION
IN FAVOR OF PLAINTIFF HERV ALEXIS

54. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

55. The defendants' conduct, in assaulting, battering and falsely arresting and imprisoning Plaintiff was outrageous, shocking and exceeded all reasonable bounds of decency.

56. The said arrest, detainment and imprisonment resulted in intentional infliction of severe emotional distress and illness to the plaintiff.

57. By reason of the foregoing Plaintiff was damaged in an amount which exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action, together with the interest, costs and disbursements of this action.

AS AND FOR A SIXTH CAUSE OF ACTION
IN FAVOR OF PLAINTIFF HERV ALEXIS

58. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

59. The defendants' conduct, in assaulting, battering and falsely arresting and imprisoning Plaintiff was outrageous, shocking and exceeded all reasonable bounds of decency.

60. The said arrest, detainment and imprisonment resulted in the negligent infliction of severe emotional distress and illness to the plaintiff.

61. By reason of the foregoing Plaintiff was damaged in an amount which exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action, together with the interest, costs and disbursements of this action.

AS AND FOR A SEVENTH CAUSE OF ACTION
IN FAVOR OF PLAINTIFF HERV ALEXIS

62. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs with the same force and effect as if fully set forth herein.

63. The defendant CITY OF NEW YORK, was negligent in its operation, management, supervision and control of its police department; in its hiring; in its training; in its conduct, at the aforesaid location; in its employees assaulting, battering and falsely arresting and imprisoning Plaintiff.

64. Additionally, the defendants POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 and POLICE OFFICER CHARLES MARTELLO, BADGE # 903165 were negligent in their conduct, in causing, or allowing, the occurrence as aforesaid.

65. That defendants herein, their agents, servants and employees, motivated in part by racial and/or ethnic animus, conspired to deprive plaintiff of his federal, civil and constitutional rights, in violation of 42 U.S.C. §1985.

66. By reason of the foregoing Plaintiff was damaged in an amount which exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action, together with the interest, costs and disbursements of this action.

WHEREFORE, Plaintiff, demands judgment against the Defendants, in an amount which exceeds the jurisdictional limitations of all lower courts which would otherwise have jurisdiction over this action, together with the interest, costs and disbursements of this action.

Yours, etc.

LAW OFFICE OF MARK SCHWARTZ
Attorney for Plaintiff
HERV ALEXIS
225 Broadway, Suite 2510
New York, New York 10007
Tel. 212-619-6275
Our File No. 13-101

VERIFICATION

MARK SCHWARTZ, an attorney duly admitted to practice law in the State of New York, hereby affirms the following, under penalty of perjury:

That I am the attorney for the plaintiff in the within action. That I have read the foregoing summons and complaint and know the contents thereof; that the same is true and to my own knowledge, except as to the matters I believe it to be true.

That the reason this verification is made by your affirmant and not by the plaintiff is that plaintiff does not reside in the County where your affirmant maintains his office.

That the grounds for your affirmant's belief as to all matters not stated upon my knowledge are as follows: records reports, facts, and documents contained in plaintiff's file maintained by your affirmant's office.

Dated: New York, New York
November 21, 2014


MARK SCHWARTZ

STATEMENT PURSUANT TO 22 NYCRR §130.1a

This **SUMMONS & VERIFIED COMPLAINT** is to the best of the signers knowledge and belief, after inquiry, certified as not frivolous. If this particular document is not the original, an original has been executed to comply with the requirements.

Yours, etc.

A handwritten signature in cursive script, appearing to read "Mark Schwartz", written in dark ink.

LAW OFFICE OF MARK SCHWARTZ
Attorney for Plaintiff
HERV ALEXIS
225 Broadway, Suite 2510
New York, New York 10007
Tel. 212-619-6275
Our File No. 13-101

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

HERV ALEXIS, Plaintiff, -against- THE CITY OF NEW YORK, POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 and POLICE OFFICER CHARLES MARTELLO, BADGE # 903165, Defendants.	COURT NOTICE REGARDING AVAILABILITY OF ELECTRONIC FILING <u>SUPREME COURT CASE</u> Index No.:
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PLEASE TAKE NOTICE that plaintiff(s)/petitioner(s) {defendant(s)/respondent(s)} in the case captioned above intends that this matter proceed as an electronically-filed case in the New York State Courts Electronic Filing System (“NYSCEF”) in accordance with the procedures therefor, described below. Filing and service of papers by electronic means cannot be made by a party nor electronic service be made upon a party unless that party has consented to use of the system. Within ten days after service of this Notice, each party served must indicate whether or not it consents to electronic filing and service through NYSCEF for this case.

General Information

In New York State, actions may be commenced and cases processed by means of the NYSCEF system in (1) tort, commercial, and tax certiorari cases in the Supreme Court in New York City and in Albany, Essex, Livingston, Monroe, Nassau, Niagara, Onondaga, Suffolk, Sullivan and Westchester Counties; and(2) any case type in Broome and Erie County Supreme Courts as authorized by the court. Electronic filing is also authorized for cases in the Court of Claims and Surrogate’s Court cases in Chautauqua, Erie, Monroe, Queens and Suffolk Counties and in no fault cases in New York City Civil Court.

Electronic filing offers significant benefits for attorneys and litigants, permitting papers to be filed with the County Clerk and the court and served in a simple, convenient and expeditious manner. NYSCEF case documents are filed with the County Clerk and the court by filing on the NYSCEF Website (www.nycourts.gov/efile), which can be done at any time of the day or night

on any day of the week. Documents in Supreme Court cases are deemed filed when received by the NYSCEF server (with payment if required), regardless of whether the court or the County Clerk's Office is open. Service between and among consenting users is effectuated by posting documents with the Website, which immediately sends automatic e-mail notice to all such parties. There is no fee to use the NYSCEF system, whether for filing, service, or consultation of the electronic docket, nor is there a charge to print documents from the docket. Normal filing fees must be paid, but this can be done by credit or debit card on-line. The use of NYSCEF in Supreme Court is governed by Section 202.5-b of the Uniform Rules for the Trial Courts.

Instructions

1. Service of this Notice constitutes a statement of intent by the undersigned that the NYSCEF system be used in this case. When an action or proceeding is being commenced by means of the NYSCEF system, this Notice must accompany service of the initiating papers.
2. **Within ten days after service of this Notice**, the party served shall file with the court and serve on all parties the attached **Consent to E-Filing**, or, if the party does not wish to consent, a **declination of consent** (also attached). Consent to electronic filing does not constitute an appearance in the action. If the party served is represented by an attorney who has already registered as a NYSCEF Filing User, that attorney may consent electronically on the NYSCEF site. Consent to NYSCEF is required of all current parties to the case in order for it to proceed as a NYSCEF matter, or, if fewer than all parties consent, where permitted by the court, NYSCEF may be used by and between or among consenting parties only.
3. Once parties agree that the case will be subject to NYSCEF, each participating attorney, unless already registered, must **PROMPTLY** complete a Filing User Registration form (see the "Forms" section of the Website) and submit it to the NYSCEF Resource Center (efile@courts.state.ny.us) in order to obtain the confidential Filing User Identification Number and Password necessary to use the system.
4. For additional information about NYSCEF, see the *User's Manual and Frequently Asked Questions* on the Website, or contact the court in question or the NYSCEF Resource

Center (at 646-386-3033 or efile@courts.state.ny.us).

Yours, etc.

LAW OFFICE OF MARK SCHWARTZ

Attorney for Plaintiff

HERV ALEXIS

225 Broadway, Suite 2510

New York, New York 10007

Tel. 212-619-6275

Our File No. 13-101

TO: THE CITY OF NEW YORK
100 Church Street
New York, New York 10007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

HERV ALEXIS, Plaintiff, -against- THE CITY OF NEW YORK, POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 and POLICE OFFICER CHARLES MARTELLO, BADGE # 903165, Defendants.	<u>CONSENT TO E-FILING SUPREME COURT CASE¹</u> Index No.:
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I, _____, am a self-represented party or an attorney for a party in the above-captioned action, and I consent to the use of the New York State Courts Electronic Filing System ("NYSCEF") in this case. I further consent to be bound by the service and filing provisions of the NYSCEF Rules (Section 202.5-b of the Uniform Rules for the Trial Courts) and will comply with the procedures of the NYSCEF system, which are reflected in the *User 's Manual* approved by the Chief Administrator of the Courts and posted on the NYSCEF website.

Pursuant to the Rules, I have, or will promptly hereafter, set forth in my NYSCEF registration application form an e-mail address that shall constitute the E-Mail Service Address of Record (Primary Address) for the purpose of electronic service of each filing under the Rules.²

Signature:	_____
Name (Print or Type):	_____
Firm Name:	_____
Attorney(s) for (identify party(s)):	_____
Street Address:	_____
City, State Zip:	_____
EMAIL:	_____
Phone:	_____

¹ * Under the Rules, consent of parties is required for filing and service by or upon those parties through NYSCEF. If an attorney has previously registered as a NYSCEF Filing User, the consent may be filed and served by means of the NYSCEF system.

² Although under the Rules electronic service is effectuated only through the E-Mail Service Address of Record (Primary Address), additional notice of filings may be obtained through the listing of E-Mail General Addresses of Record. Such addresses may be listed on the registration application and may be recorded in the Profile Section of the NYSCEF system. See www.nycourts.gov/efile.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

<p>HERV ALEXIS,</p> <p>Plaintiff,</p> <p>-against-</p> <p>THE CITY OF NEW YORK, POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 and POLICE OFFICER CHARLES MARTELLO, BADGE # 903165,</p> <p>Defendants.</p>	<p>DECLINATION TO E-FILING SUPREME COURT CASE</p> <p>Index No.:</p>
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I, _____, am a self-represented party or an attorney for a party in the above-captioned action, and do not consent to the use of the New York State Courts Electronic Filing System ("NYSCEF") in this case.

Signature:	_____
Name (Print or Type):	_____
Firm Name:	_____
Attorney(s) for (identify party(s)):	_____
Street Address:	_____
City, State Zip:	_____
EMAIL:	_____
Phone:	_____

Index No.:

Date Purchased:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

HERV ALEXIS,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER JOHN MAZZELLA, BADGE # 921551 and
POLICE OFFICER CHARLES MARTELLO, BADGE # 903165,

Defendants.

<p>SUMMONS & VERIFIED COMPLAINT with e-file documents attached</p>

LAW OFFICE OF MARK SCHWARTZ

Attorney for Plaintiff

HERV ALEXIS

225 BROADWAY, SUITE 2510

NEW YORK, NEW YORK 10007

TEL. 212-619-6275

OUR FILE NO. 13-101

TO: THE CITY OF NEW YORK
100 Church Street
New York, New York 10007